

HOUSE No. 986

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to homeowners insurance .

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO HOMEOWNERS INSURANCE .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 4C the following section:-

Section 4D. The commissioner shall adopt regulations to require all insurers licensed to write and engaged in the writing of homeowners insurance in the commonwealth and the joint underwriting association, established in chapter 175C, to produce a standard outline of coverage written in language prescribed or approved by the commissioner that describe the features of the coverage. Each insurer, including the joint underwriting association, shall be required to provide this information to each policyholder upon the issuance or renewal of a policy.

SECTION 2. Said chapter 175, as so appearing, is hereby amended by inserting after section 99C the following 2 sections: -

Section 99D. (a) In all instances where an insurance company licensed to write property insurance in the commonwealth offers or includes any deductible for wind related damages and mitigation measures related to such deductible, the insurance company shall provide prominent and clear notice to the insured that shall be included with the policy issuance or renewal package,

and shall fully disclose all details pertaining to any such deductible and mitigation measure in a format approved by the commissioner of insurance.

(b) An insurer may only apply a deductible for wind related damages in personal lines of insurance, where:

(1) the deductible is specifically approved by the commissioner and shall not exceed 3 per cent of the policy's coverage A amount; nothing herein shall prohibit the policyholder from electing a higher deductible, not to exceed 5 per cent of the policy's coverage A amount, by affirmative signature.

(2) the deductible shall be applicable to losses due to a named hurricane with wind velocities exceeding 74 miles per hour, commencing with the issuance of a hurricane warning or hurricane wind speed warning ,in the geographical area of the commonwealth where the damage occurs, by the local National Weather Service office and concluding 12 hours after the storm has been downgraded from a hurricane status by said office;

(3) the deductible, whether a flat dollar amount or a percentage of insured value, shall be presented in at least 2 examples that illustrate the application of the deductible to the insured. Nothing herein shall prohibit the insurer from providing any additional information to the insured to assist in the insured's understanding of the deductible to be applied to the insured's policy.

(c) The commissioner, in consultation with the board of building and regulations and standards, shall investigate mitigation measures designed to reduce losses from wind related damages. Based so far as reasonably feasible on national standards for such measures and practices in other comparable states, the commissioner shall adopt regulations describing approved mitigation measures and the minimum corresponding benefits, such as credits, lower

deductibles, and reduced premiums that policyholders will receive from insurers upon completion of said measures and either, at the insurers discretion, inspection of the property by the insurer or submission of satisfactory proof of installation of the approved mitigation measures by the insured.

(d) The commissioner shall adopt regulations to implement this section.

Section 99E. (a) For the purposes of examining and investigating hurricane loss methodology in an effort to ensure the most actuarially sophisticated guidelines and standards for projection of hurricane losses possible, there shall be a Center for Hurricane Research, hereinafter referred to as the center, at the University of Massachusetts Lowell. The center shall employ such actuarial, expert, professional, clerical, or other assistants as the work of the center may require. For the purpose of carrying out its duties as set forth in this section the center may expend such funds as may be appropriated to the University of Massachusetts at Lowell.

(b) The center shall develop criteria for hurricane loss projection models and methodologies that are specific to Massachusetts and may from time to time adopt revisions to these criteria. In establishing the criteria, the center shall consider any models, model software, methods, principles, standards, data, inputs, manuals, validation studies and output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in homeowners insurance rate filings. The criteria developed under this subsection shall be based on, but not limited to, actual data on Massachusetts construction practices, codes, buildings, weather patterns, water temperatures and historic hurricane and storm data including the frequency of such storms relevant to Massachusetts. Criteria developed by the center for this purpose shall be a public record.

60 c) Any person or entity that has developed a hurricane model and wishes such a model to
61 be used to determine rates for homeowner's insurance in the commonwealth shall submit to the
62 center, in advance of any proceeding before the commissioner in which such model is used, all
63 hurricane models, model software, methods, principles, and standards,

64 The center shall consider any actuarial models, model software, methods, principles, standards,
65 or output ranges that have the potential for improving the accuracy of or reliability of the
66 hurricane loss projections used in residential property insurance rate filings. In its analysis, the
67 center shall consider all relevant variables, including those data specific to construction practices,
68 building codes, existing housing stock, weather patterns, water temperatures, and historic
69 hurricane and storm data in the commonwealth. The center shall, from time to time, adopt
70 findings as to the accuracy or reliability of particular models, methods, principles, standards, or
71 output ranges. The center shall have discretion to rely on the review conducted by similar
72 centers or regulatory bodies and to focus on those aspects of hurricane loss projection
73 methodologies that are specific to the commonwealth. Hurricane models that are approved by
74 the center for use in residential property insurance rate filings in the commonwealth shall be
75 deemed to be reasonable by the commissioner of insurance and to meet the requirements of
76 chapter 174A of the general laws in any residential property insurance rate filings, including any
77 filings made by the association created under chapter 175C of the general laws and any
78 proceedings conducted thereon.

79 If any insurer submits a rate filing request to the commissioner that relies on a hurricane
80 model or model data that has not been submitted to the center or that such modeling person or
81 entity refuses to submit to the center, the commissioner shall disregard any part of such rate
82 filing that relates to or relies on such model.

83 The center shall adopt revisions to previously adopted actuarial methods, principles,
84 standards, models, or output ranges from time to time.

85 (d) The center shall submit to the commissioner its findings on any hurricane model
86 reviewed within thirty days of making such findings. Such findings shall assess the degree to
87 which the model complies with the criteria developed in subsection b above.

88 The Commissioner shall schedule a hearing on said findings. At such hearing the
89 commissioner shall consider all evidence relevant to the findings of the center and shall make a
90 determination as to the appropriateness of said model for use in the Massachusetts market,
91 provided however that trade secrets outlined in subsection e below, shall remain confidential and
92 shall not be deemed a public record.

93 If the commissioner approves the findings of the center after said hearing, such model
94 shall be deemed to be reasonable by the commissioner of insurance and to meet the requirements
95 of chapter 174A of the general laws in any residential property insurance rate filings, including
96 any filings made by the association created under chapter 175C of the general laws and any
97 proceedings conducted thereon. Models accepted by the commissioner may be used at any rate
98 hearing within one year of the commissioner's approval.

99 (e) A trade secret used in designing and constructing a hurricane loss model, provided by
100 a person to the center, is confidential and shall not be deemed a public record, as defined in
101 section 7 of chapter 4 of the Massachusetts general laws. The center shall maintain custody of
102 any records made confidential by this paragraph using a secure location or website. Employees,
103 students, staff, agents and consultants hired by the center shall be bound to maintain the
104 confidentiality of the trade secrets of the model and the hurricane modelers. That portion of a
105 rate proceeding on an insurer's rate filing at which a trade secret made confidential and exempt

by this paragraph is discussed shall be deemed confidential and not open to disclosure pursuant to the open meetings act, but may be discussed at a closed meeting as provided for in section 11A1/2 of chapter 30A of the Massachusetts general laws.

(f) The center may collaborate with centers or organizations established for a similar purpose in other states for the furtherance of the goals of this section.

SECTION 3. Section 168 of chapter 175 of the general laws, as so appearing, is hereby amended by inserting after the sixth sentence, in line 37, the following two sentences - "Any insurance policy procured pursuant to this section shall contain the following disclosure notice to the policyholder: This policy is insured by a company which is not admitted to transact insurance in the commonwealth, is not supervised by the commissioner of insurance, and, in the event of an insolvency of such company, a loss shall not be paid by the Massachusetts Insurers Insolvency Fund under chapter 175D. The commissioner may by regulation amend the foregoing disclosure notice."; and further by striking in the eighth sentence, in line 61, the word "or"; and further by inserting in line 65, after the word "20A", the following text - ", or (c) such company is an eligible alien unauthorized insurer, as defined in section 168A of this chapter".

SECTION 4. Chapter 175 of the general laws, as so appearing, is hereby amended by inserting after section 168 the following new section:-

Section 168A. (a) As used in this section "eligible alien unauthorized insurer" means a company formed under the laws of any government or state other than the United States or one of its states or its territories that has filed an application with the commissioner pursuant to subsection (c)(4) of this section, which application has been approved by the commissioner.

(b) Notwithstanding any general or specific law to the contrary, a special broker licensed by the commissioner pursuant to section 168 of this chapter may procure insurance from any

company formed under the laws of any government or state other than the United States or one of its states or its territories that is not authorized to transact business in this commonwealth if:

(1) such company has been determined by the commissioner to be an eligible alien unauthorized insurer pursuant to subsection (c)(4) of this section;

(2) the special broker has executed and filed an affidavit with the commissioner within twenty days after procuring such insurance stating that the full amount or type of insurance cannot be obtained from among companies admitted to transact insurance in the commonwealth after a diligent effort has been made to do so and that the amount of insurance procured in such company is only the excess over the amount so procurable from admitted companies;

(3) the procured policy contains the disclosure notice required by section 168 of this chapter; and

(4) all other requirements of this section and of section 168 of this chapter that are not inconsistent with this section have been met.

Insurance procured under this section shall be valid and enforceable as to all parties.

Nothing in this section shall be deemed to amend or modify any of the provisions of, or any of the exemptions specified in, section 168 of this chapter that are not inconsistent with this section.

(c) No company shall be determined to be an eligible alien unauthorized insurer unless it:

(1) has provided satisfactory evidence to the commissioner of its good repute and financial integrity;

(2) has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction in an amount of at least \$20,000,000;

(3) has in force a United States trust fund of not less than the greater of:

(i) \$5,400,000; or

(ii) A percentage of its United States surplus lines gross liabilities arising from business written on or after January 1, 1998, excluding aviation, wet marine, transportation insurance and direct procurement placements, said percentage to equal the percentage, and be subject to any cap, employed by the International Insurance Department of the National Association of Insurance Commissioners, as of December 31 next preceding the date of determination, where:

(I) The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of United States policyholders consisting of cash, securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments pursuant to this chapter for the capital and statutory reserves of admitted insurers to write like kinds of insurance in the commonwealth. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the requirements of the Standard Form Trust Agreement required for listing with the International Insurers Department of the National Association of Insurance Commissioners;

(II) The company may request approval from the commissioner to use the trust fund to pay valid surplus lines claims; provided, however, that the balance of the trust fund is never less than the minimum amount required by this subsection;

(III) In calculating the trust fund amount required by this subsection, credit shall be given for surplus lines deposits separately required and maintained for a particular state or territory of the United States, not to exceed the amount of the company's loss and loss adjustment reserves in that particular state or territory; and

(4) has submitted to the commissioner an application evidencing the company's compliance with the requirements of this section that has been approved by the commissioner.

(d) The application required by subsection (c)(4) of this section shall be on forms issued or approved by the commissioner, and must include the following information regarding the alien unauthorized insurer applicant:

(1) Evidence that the unauthorized alien insurer has been listed by the International Insurers Department of the National Association of Insurance Commissioners;

(2) A certified audited financial statement of the alien unauthorized insurer reflecting information as of a date no more than twelve (12) months prior to the submission of the application evidencing compliance with the capital and surplus requirements of subsection (c)(2) of this section and an actuarial opinion as to the adequacy of, and methodology used to determine, the insurer's loss reserves;

(3) A copy, certified by the trustee, of the United States trust agreement required by subsection (c)(3) of this section prepared in accordance with the National Association of Insurance Commissioner's Standard Form Trust Agreement for Alien Excess or Surplus Lines Insurers;

(4) A copy, certified by the trustee, of the most recent quarterly statement of account or list of assets in the trust account required by subsection (c)(3) of this section evidencing that the alien unauthorized insurer has in force, as of the end of the most recent quarter, assets in the amounts required by subsection (c)(3) of this section;

(5) A certified copy of the alien unauthorized insurer's current license or certificate of authority issued by its domiciliary jurisdiction indicating such company is authorized to insure the types of risks in its domiciliary jurisdiction that it proposes to insure in the commonwealth;

(6) A Certificate of Good Standing, or substantially similar documentation, issued by the alien unauthorized insurer's jurisdiction of domicile;

(7) Biographical affidavits, on forms promulgated by the National Association of Insurance Commissioners or approved by the commissioner, for all executive officers, directors, and senior management personnel of the alien unauthorized insurer, prepared no more than twelve (12) months prior to the submission date of the application required by subsection (c)(4) of this section; and

(8) Such additional information as the commissioner may require in order to determine whether the alien unauthorized insurer complies with the requirements of this section.

(e) The commissioner may refuse to approve an application pursuant to this section if he is of the opinion that such refusal will be in the public interest. In reviewing an application the Commissioner may consider such factors as:

(1) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere;

(2) The unavailability of the particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this section and section 168 of this chapter;

(3) The size of the company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria;

(4) The kinds of business the company writes, its net exposure and the extent to which the company's business is diversified among several lines of insurance and geographic locations; and

(5) The past and projected trend in the size of the company's capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria

(f) The commissioner may revoke a company's status as an eligible alien unauthorized insurer in accordance with the terms and conditions of section 5 of this chapter if at any time the commissioner has determined that the insurer:

(1) Is in unsound financial condition or has acted in an untrustworthy manner;

(2) No longer meets the standards set forth in subsection (c) of this section;

(3) Has willfully violated the laws of the commonwealth; or

(4) Does not conduct a proper claims practice.

SECTION 5. Clause (1) of subsection (A) of section 177O of said chapter 175, as so appearing, is hereby amended by striking out, in line 7, the word "producer" and inserting in place thereof the words "reinsurance intermediary broker"

SECTION 6. Clause (1) of subsection D of said section 177O of said chapter 175, as so appearing, is hereby amended by striking out the second sentence.

SECTION 7. Chapter 175C of the General Laws, as so appearing, is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4. (a) All insurers licensed to write and engaged in writing in this commonwealth, on a direct basis, basic property insurance or any component thereof in multi-peril policies, shall cooperate in organizing a joint underwriting association which shall provide basic property insurance to eligible applicants who are otherwise unable to obtain such coverage in the voluntary market. Every such insurer shall be a member of the association and remain a member as a condition of its authority to transact such insurance within the commonwealth.

(b) Such association shall be authorized to inspect properties, issue policies, collect premiums and accept payment in installments under plans approved by the commissioner consistent with plans offered by voluntary market insurers and reflecting options for at least 6

243 payments annually, adjust claims and pay losses on behalf of its members, employ officers,
244 agents and other employees, enter into contracts, sue and be sued in its own name and take all
245 other actions necessary or appropriate to carry out its functions.

246 (c) The association shall submit to the commissioner a proposed plan of operation,
247 consistent with the purposes of this chapter, to provide for the prompt and efficient provision of
248 basic property insurance to eligible applicants who meet reasonable underwriting standards and
249 are otherwise unable to obtain coverage from insurers in the voluntary market. Such plan of
250 operation shall provide for economical, fair and nondiscriminatory administration including, but
251 not limited to, provisions for preliminary assessment of all members for initial expenses
252 necessary to commence operations, establishment of necessary facilities, management of the
253 association, assessment of members to defray losses and expenses, commissions, reasonable
254 underwriting standards and limits of liability, purchase of reinsurance and procedures for
255 determining amounts of insurance to be provided.

256 (d) The plan of operation shall be subject to approval by the commissioner, following a
257 public hearing, and shall take effect 10 days after the commissioner approves it. If the
258 commissioner disapproves the proposed plan of operation, the association shall, within 30 days,
259 submit for review an appropriately revised plan of operation and, if the association fails to
260 submit such a plan or if the revised plan is also disapproved by the commissioner, the
261 commissioner shall promulgate a plan of operation consistent with this section. The association
262 may, on its own initiative or at the request of the commissioner, amend the plan of operation,
263 subject to approval by the commissioner.

264 (e) (1) All members of the association shall participate in its writing, expenses, profits
265 and losses in the proportion that the premiums written by each such member for basic property

insurance, as defined in section one, except premiums for insurance on automobile and manufacturing risks excluded from the plan and that portion of the premiums attributable to the operation of the association during the preceding calendar year, bear to the aggregate premiums for such insurance written in the commonwealth by all members of the association. Such participation by each insurer in the association shall be determined annually on the basis of such premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the insurer with the commissioner.

(2) The participation of each member of the association writing personal lines coverage shall be adjusted based on the homeowners premiums written by such a member in any credit-eligible zip code, defined as any zip code in the commonwealth where the association market share in such zip code exceeds one and one half times the association's statewide market share and further that the association market share in that zip code shall equal or exceed fifteen per cent, averaged over the latest three calendar years, in accordance with the following clauses:

(i) The participation ratio of each member writing personal lines insurance shall be recalculated, in accordance with the procedures set forth in subparagraph (1) but subtracting the premium written by members of the association writing only commercial lines insurance from the aggregate premiums written in the commonwealth by all members of the association.

(ii) The participation ratio of each member writing personal lines insurance as recalculated in clause (i) shall be multiplied by the sum of the total premium written by the association in the commonwealth and 150 per cent of the total industry homeowners credit eligible premium written in credit-eligible zip codes, as defined in this chapter.

(iii) The product of the multiplication described in clause (ii) of this subsection shall be (A) reduced by subtracting therefrom 150 per cent of the homeowners premium written by each

member in any credit-eligible zip code in the year of an association loss or (B) shall be increased by adding therefrom 150 per cent of the homeowners premium written by each member in any credit-eligible zip code in the year of an association profit.

(iv) The result of the calculation described in clause (iii) for a carrier, never less than zero, shall be divided by sum of this calculation across all carriers. The resulting ratio shall be the adjusted participation ratio for the member.

(v) The adjusted participation ratio of those members whose participation ratio is calculated as provided in this subparagraph shall apply to that portion of the writings, expenses, profits and losses of the association not recovered by applying the participation ratios of the remaining members of the association as calculated, as provided in subparagraph (1).

(3) The participation of any member of the association writing personal lines insurance shall be further adjusted if such member has written homeowners insurance during the preceding calendar year, hereafter called the base year, on property that was insured by the association in the year immediately preceding such base year and which is located in any credit eligible zip code, defined as any zip code in the commonwealth where the association market share in such zip code exceeds one and one half times the association's statewide market share and further that the association market share in that zip code shall equal or exceed fifteen per cent, averaged over the latest three calendar years. The participation of such a member shall be adjusted by (i) reducing the amount of premium written by such member in subparagraph (1) by one hundred per cent of the total homeowners insurance premiums written by the member on property described in this clause in the year of an association loss or by (ii) increasing the amount of premium written by such member in subparagraph (1) by one hundred per cent of the total homeowners insurance premiums written by the member on property described in this clause in

the year of an association profit. Such adjustment shall not apply to any insurance written on property that was insured by the member or any affiliate or subsidiary member in either of the two years preceding the base year.

(f) The association shall be governed by a board of 18 directors, who shall serve without compensation. Ten directors shall be elected annually by the members of the association by cumulative voting; 2 directors of associations of insurance agents and brokers doing business in the commonwealth appointed by the commissioner; 4 directors from the general public appointed by the commissioner, one of whom shall reside in a coastal territory; and 2 directors from the general public appointed by the attorney general, one of whom shall reside in a coastal territory. The 6 directors appointed from the general public by the commissioner of insurance and the attorney general shall serve 3-year terms, staggered in a manner to ensure the annual expiration of the terms of 2 directors, and shall not serve as director for more than 3 consecutive terms. The 6 directors appointed from the general public may not have affiliations with the insurance industry. Cumulative voting by members shall be permitted at all such elections.

SECTION 8. Subsection (c) of section 5 of said chapter 175C, as so appearing, is hereby amended by inserting after the third sentence, the following sentence: "The commissioner shall consider premium adjustments on owner's policy forms for homeowners in large share territories to keep costs reasonable for primary residents."

SECTION 9. Said section 5 of said chapter 175C, as so appearing, is hereby further amended by inserting the following subsection:-

(d) The commissioner shall promulgate regulations requiring insurers to educate consumers as to the nature of and alternatives to the unlimited guaranteed replacement cost

endorsement. Consumers shall then be required to sign a waiver assuring their understanding of the unlimited guaranteed replacement cost.

SECTION 10. The association shall annually make a return to the commissioner of revenue on behalf of the members of the association reporting the amount of the aggregate excise imposed on the members under sections twenty-two and twenty-three of chapter sixty-three with respect to policies or certificates of insurance issued by the association on behalf of the members and shall pay to the commissioner at the time fixed for filing such return the amount of the aggregate excise thereby imposed on the members. The association shall give such information on its return as the commissioner may deem necessary for the determination of the excise imposed on the members of the association under sections twenty-two and twenty-three of chapter sixty-three on business transacted by the members directly and through the association. The association shall make payments of estimated tax on behalf of the members of the association with respect to the excise imposed on the members under sections twenty-two and twenty-three of chapter sixty-three with respect to policies or certificates of insurance issued by the association on behalf of the members under procedures established by the commissioner which are similar to the procedures and requirements for corporations to make payments of estimated tax under sections two through ten of chapter sixty-three B.

SECTION 11. Notwithstanding the provisions of section (7), the appointment of the 4 directors from the general public appointed by the commissioner of insurance shall be as follows: 2 directors shall be appointed for a term of 3 years, 1 director shall be appointed for a term of 2 years, and 1 director shall be appointed for a term of 1 year. The appointment of the 2 directors from the general public appointed by the attorney general shall be as follows: 1 director shall be appointed for a term of 2 years and 1 director shall be appointed for a term of 1 year. Upon

357 expiration of these appointments, all subsequent appointments of directors from the general
358 public shall be appointed for 3 year terms.

359 SECTION 12. The department of revenue, in consultation with the division of insurance, shall
360 make an investigation and study relative to the benefits and viability of a low interest loan
361 program to assist homeowners in the commonwealth with both the costs associated with the
362 purchase and installation of approved mitigation measures as described in section 2 and
363 homeowners insurance deductibles on damage associated with wind storms. The department
364 shall also study the potential utilization by homeowners as well as the funding required to
365 support such a loan program.

366 The department of revenue shall file a report of the results of its investigation, along with
367 any legislative and regulatory recommendations, with the joint committee on financial services
368 and the clerks of the senate and house of on or before January 15, 2010.

369 SECTION 13. Notwithstanding any general law to the contrary the Massachusetts Property
370 Insurance Underwriting Association shall not increase rates for the association homeowners
371 insurance policies in large scale territories before March 1, 2010.

372 SECTION 14. Section 99D of chapter 175 of the General Laws shall apply to all policies issued
373 or renewed on or after June 30, 2010.